

be costly to both the agency and, therefore, to the taxpayers in a premature manner.

So, Mr. Chairman, I would hope the gentleman would try to work with us in a conference and withdraw his amendment, but in view of the fact that I assume the gentleman wants to proceed, then I will offer an amendment to the gentleman's amendment at the appropriate time.

The CHAIRMAN pro tempore. The Committee will rise informally.

The SPEAKER pro tempore (Mr. YOUNG of Florida) assumed the Chair.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

EXPORT ENHANCEMENT ACT OF 1999

The Committee resumed its sitting.

The CHAIRMAN pro tempore. The Chair recognizes the gentleman from New Jersey (Mr. MENENDEZ).

AMENDMENT OFFERED BY MR. MENENDEZ TO THE AMENDMENT NO. 10, AS MODIFIED, OFFERED BY MR. TERRY

Mr. MENENDEZ. Mr. Chairman, I offer an amendment to the amendment, as modified.

The Clerk read as follows:

Amendment offered by Mr. MENENDEZ to Amendment No. 10, as modified, offered by Mr. TERRY: Strike lines 1 through 18 and insert the following:

"SEC. 5. REVIEW OF CLAIMS PROCESSING FOR OPIC.

"The General Accounting Office is requested to provide a report not later than 6 months after the date of the enactment of this Act to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, which reviews the claims activity of the Overseas Private Investment Corporation. The report shall include—

"(1) an analysis of claims paid, settled and denied by OPIC;

"(2) the number of claims determinations made by OPIC which are challenged in arbitration;

"(3) the number of OPIC's claims denials which are reversed in arbitration;

"(4) the number of claims which are withdrawn; and

"(5) recommendations for ways in which the interests of OPIC insureds and the public could be better served by OPIC's claims procedures."

Mr. MENENDEZ (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. MENENDEZ. Mr. Chairman, what we hope to do through this amendment is to try to reach the gentleman's concern, but at the same time, create the operational capacity

for OPIC to do what it does so well. What we offer here is a review of claims processing for OPIC. Having the General Accounting Office providing a report not later than 6 months after the day of the enactment of this law to both the Committee on International Relations and the Senate Foreign Relations Committee, to review the claims activity of OPIC which includes an analysis of the claims paid, settled, and denied; the number of claims determination made by OPIC which are challenged in arbitration; the number of OPIC's claim denials which are reversed in arbitration; the number of claims which are withdrawn; and recommendations for ways in which the interests of OPIC's insured and the public could be better served by OPIC's claims procedures.

To the extent that OPIC has a great record and it can be improved upon, this gives us the wherewithal to do it without creating the constraint that the gentleman's amendment would.

Mr. Chairman, OPIC's standard contracts presently allow OPIC a reasonable time to make a decision after receipt of a completed application, one that establishes the insured's right to be compensated in the amount claimed.

Now, when we have this political risk insurance, the fact of the matter is it raises complex issues: issues of fact, contract interpretation, foreign law, international law and accounting. They cannot be resolved over the phone as we might do if we had an automobile accident or a homeowner's claim and try to deal with our insurance company. They are extremely complex.

Therefore, the time frame that the gentleman wants, while his goal is worthy, ultimately really hampers OPIC in a way that is detrimental to that small businessperson, as well as to the taxpayers, by the enforcement of a mechanism that makes them pay interest by the time that the time frame is exhausted, and that time frame is rather short, 150 days, total. That is a very short time frame.

OPIC's decisions on claims become public. They are relied upon as a way and as a means and as a guide to looking at OPIC contracts and are cited in broader discussions of international investment law. Reaching the right bottom line result is simply not enough. OPIC's rationale has to be properly articulated, because if not, others will seek to pursue those future actions if we do not articulate the right set of reasons, and that can be more costly to us.

So any interactive process takes time. If OPIC has to reach final decisions within a fixed deadline, more claims will be denied and in that process of denial will start a series of circumstances that we are going to hurt the investor, we are going to impinge upon the agency, we are going to start charging interest after that 150 days; and that ultimately is going to create a problem for us in terms of the taxpayers of this country.

I think, while the gentleman's intention is well-meaning, his effort as to how he achieves that is both problematic for the agency, problematic for the entities to be insured, problematic for the taxpayers. So I urge the adoption of my amendment to the Terry amendment.

□ 1530

Mr. TERRY. Mr. Chairman, I move to strike the last word.

Mr. Chairman, first of all, I want to be clear on what this amendment does. It is, in essence, a substitute amendment to mine. It statutorily incorporates the status quo. It basically says that OPIC has 6 months next to never to resolve claims.

That is no improvement. There are examples where OPIC has drug their feet on claims for a variety of different reasons, but the fact that they have taken substantial time to resolve claims is unrefuted.

The issue then is if they are going to act like a private insurance company, they have to treat claims with good faith. If we review insurance laws of every State, we will see provisions that outline how insurance companies have to act in good faith. One of those provisions in every State is that they have to handle claims expeditiously. If they do not, the remedy is usually pre-judgment interest.

This is what my amendment does, is simply put into the system some accountability. That accountability is if they are going to drag their feet on claims, on valid claims, then after 150 days they should have to pay interest on the amount of that claim.

The world does not operate in a vacuum. If Indonesia takes over a power plant and kicks out the U.S. citizen that built that and threatens to jail them if they return, that is expropriation. OPIC knows when that happens. Now, the applicant has to document those activities, and will take the time to properly put their case together before they submit that.

It is reasonable, then, because OPIC, if they are diligent at all, should already know what is going on, for them to be able to review that within a certain short period of time. If additional information is necessary, as is outlined in mine, and that request is reasonable, then they should be afforded an extra 60 days, for a total of 150 days.

My amendment is reasonable. The substitute amendment offered by the gentleman from New Jersey (Mr. MENENDEZ) guts mine entirely, and basically, as I said, incorporates the status quo.

A couple of points raised; one, that OPIC resolves 94 percent of the claims. I am sure under the current leadership that that will not change. What may change, though, is another category of the timeliness of those resolutions.

That is what we are requesting, is simply that OPIC have a set time frame to resolve those claims. I am sure they will act expeditiously under the current leadership.